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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JOSEPH GARCIA,

14 Defendant.

CASE NO. CR10-378 MJP

ORDER DENYING  
RECONSIDERATION

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16 This comes before the Court on the Government's motion for reconsideration. (Dkt. No.  
17 130.) Having reviewed the motion, the Court DENIES the Government's motion for  
18 reconsideration.

19 **Discussion**

20 In an oral ruling on August 2011, the Court granted Defendant Joseph Garcia's  
21 ("Garcia") motion to suppress evidence. (Dkt. No. 125.) Specifically, the Court determined  
22 Garcia's Fourth Amendment rights were violated when Department of Corrections ("DOC")  
23 officers, accompanied by Whatcom County Sheriff officers, searched Garcia's workplace  
24 without a warrant. The Government now seeks reconsideration, arguing the search of Garcia's

1 workplace was permitted under the “totality of the circumstances” exception to warrant and  
2 probable-cause requirements. (Dkt. No. 130 at 4.) The Court disagrees.

3 First, the Government argues a search may satisfy the Fourth Amendment even if no  
4 probation condition authorizes the search and the search violates state law. Specifically, the  
5 Government argues a search satisfies the Fourth Amendment if under the totality of the  
6 circumstances the search was reasonable. The Court finds the November 2011 search did not  
7 meet this standard. As the Court found in its oral ruling, Garcia was working at the Guide  
8 Meridian garage when multiple officers from the DOC and Whatcom County Sheriff’s  
9 Department arrived to arrest him. After Garcia was arrested, however, the officers conducted a  
10 warrantless search of Garcia’s workplace that exceeded the scope of his probation condition.  
11 Specifically, the officers searched the garage without obtaining a warrant and without knowing  
12 which items belonged to Garcia or what Garcia had access to. Only after the officers entered an  
13 adjacent mobile home did they finally retreat to secure a telephonic warrant. The Court finds  
14 under a totality of the circumstances, the warrantless search was not reasonable.

15 The Government relies on several cases to argue reasonableness, all of which are  
16 inapposite. In United States v. Graham, 553 F.3d 6 (1<sup>st</sup> Cir. 2009), the First Circuit held no  
17 Fourth Amendment violation occurred even though the search violated the state constitution.  
18 But in Graham, the police reasonably believed that the defendant resided at the apartment they  
19 searched. Id. In this case, there was no similar mistake; the officers knew the Guide Meridian  
20 location was not Garcia’s residence. Similarly, the Government’s reliance on United States v.  
21 Keith fails. In Keith, the Fifth Circuit found a written probation condition was not required for a  
22 warrantless search of the probationer’s home. But the Fifth Circuit’s reasoning turned on several  
23 Wisconsin cases that explicitly allowed for searches of probationers’ homes based on reasonable  
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1 suspicion alone. In the instant case, the Government does not refer to any Washington case law  
2 suggesting searches of a probationer's workplace are permissible. While Garcia was on  
3 probation and subject to certain agreed upon probation conditions, the probation conditions  
4 Garcia agreed to did not include warrantless searches of his workplace. Given that officers  
5 could have readily secured the area and requested a warrant before conducting their search, the  
6 Court finds under a totality of the circumstances, the warrantless search was not reasonable.

7         Second, the Government argues searches of an offender's workplace have been upheld  
8 under the Fourth Amendment even absent a probation condition. The Court finds the argument  
9 unavailing. The Government's argument relies on United States v. Hill, 967 F.2d 902, 908 (3d  
10 Cir. 1992). In Hill, parole agents were tipped off by the defendant's girlfriend that the  
11 defendant's barbeque chicken store contained drugs and firearms. After searching the store,  
12 which was located below the defendant's apartment, the parole agents searched the store and  
13 discovered several firearms. The Third Circuit found the warrantless search to be reasonable.  
14 However, in finding the search was reasonable, the Hill court observed no police were present at  
15 the search and there was no evidence that the parole agents acted on behalf of the police. Here,  
16 in contrast, Whatcom County police officers were present before and during the search and  
17 Garcia's workplace was completely separate from his residence. Under a totality of the  
18 circumstances, the warrantless search of Garcia's workplace was not reasonable.

19         To the extent the Government argues the Washington legislature intended the probation  
20 condition to include warrantless searches of a probationer's workplace, the Court finds the  
21 Government's argument misplaced. (See Dkt. No. 130, 3 n.2.) The Washington statute  
22 authorizes the warrantless search of a probationer's "person, residence, automobile, or other  
23 personal property." Wash. Rev. Code. § 9.94A.631(1). By its express terms, the Washington  
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1 statute does not consider a probationer's workplace and to interpret "residence" to include a  
2 probationer's workplace would subvert the basic definition of "residence," i.e., a dwelling or  
3 building used as a home. While the Fourth Amendment has been interpreted as applying to  
4 commercial buildings as well as private homes, see Marshall v. Barlow's, Inc., 436 U.S. 307,  
5 311 (1978), the Government points to no case law interpreting the Washington statute similarly.  
6 The Court finds the incongruity understandable given that the Fourth Amendment protects an  
7 individual's right to privacy while the Washington statute, for some, decreases it.

### 8 **Conclusion**

9 The Court DENIES the Government's motion for reconsideration because the totality of  
10 the circumstances exception to the Fourth Amendment's warrant and probable-cause  
11 requirements does not apply.

12 The clerk is ordered to provide copies of this order to all counsel.

13 Dated this 6th day of September, 2011.

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17 Marsha J. Pechman  
18 United States District Judge  
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